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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/813,364	03/31/2004	Gregory R. Thune	059691-0114	5021
22428	7590	03/13/2006	EXAMINER	
FOLEY AND LARDNER LLP			PRICE, CARL D	
SUITE 500			ART UNIT	
3000 K STREET NW			PAPER NUMBER	
WASHINGTON, DC 20007			3749	

DATE MAILED: 03/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

DETAILED ACTION

Response to Arguments

Applicant's arguments with respect to claims 1, 8, 9 and 36-38 have been considered but are moot in view of the new ground(s) of rejection.

Applicant has amended the claims to be of a scope not previously considered. Consistent with applicant's argument that the prior art relied on in the previous office action fail to show, disclose and/or teach certain aspects of applicant's invention now recited in the claims filed on 01/03/2006 applicant has amended the claims to include the following:

- "... a fitment that is removably attached to the burn control cover, said fitment configured to seal said candle container..."

In order to address the newly added limitation that "*said fitment configured to seal said candle container*", the newly cited prior art references of US001267475 (Stroble), US001365074 (Alvarez et al.) and US001165326 (Dunn) is now relied on in the flowing rejection of the claims. Each of these prior art references teach providing fuel fired container air feeding top covers with a fitment that is removably attached thereto and wherein the fitment, or cover, is configured to seal the fuel candle container for a variety of reasons, such as, for "preventing evaporation of the volatile constituents of the hydrocarbon fuel" (US001267475 (Stroble)), protection of the device "during rain, sleet and the like" (US001365074 (Alvarez et al.)) and "to keep out moisture and dirt" (US001165326 (Dunn)). See below.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 3749

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1, 8, 9, 36-38 are rejected under 35 U.S.C. 103(a)

Claims 1, 8, 9 and 36-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over **US006585510B2 (PAPAI)** in view of **US001267475 (Stroble)**.

US006585510B2 (PAPAI) shows and discloses a candle fuel fired container including:

- a holder (10) with a top rim;
- a burn control cover (40) with a chimney (32) on a top surface and with a central exhaust hole (35) formed therein;
- a rim (34) configured to removably attach to the top rim (not referenced) of the holder and a lower ring (36) extending vertically down from an interior of the burner control cover and which extends below (see figure 4) the top rim of the holder when the burner control cover is attached to the holder;
- the burner control cover includes peaks (28) and troughs (e.g. – 23; figure 3) that define air intake vents in the rim; and
- wherein the burner control cover and holder are configured to vent air into the holder at a circumference of the rim of the holder.

US006585510B2 (PAPAI) discloses the invention substantially as set forth in the claims with possible exception to:

- a fitment that is removably attached to the burn control cover wherein the fitment is configured to seal the candle container.

Each of **US001267475 (Stroble)**, **US001365074 (Alvarez et al.)** and **US001165326 (Dunn)** teach, form from applicants' same as well as the same field of endeavor in **US006585510B2 (PAPAI)**, providing a fuel fired container air feeding top covers with a fitment that is removably attach so that the fitment, or cover, is configured to seal the fuel container for a variety of reasons, such as, for "preventing evaporation of the volatile constituents of the hydrocarbon fuel" (**US001267475 (Stroble)**; see element 8), protection of the device "during rain, sleet and the like" (**US001365074 (Alvarez et al.)**; see elements 8, 34) and "to keep out moisture and dirt" (**US001165326 (Dunn)**; see elements 20, 21).

In regard to claims **1, 8, 9** and **36-38**, for the purpose of, for example, protection of the device during rain, sleet and the like, it would have been obvious to a person having ordinary skill in the art to a fitment, or cover, that is removably attached to the burn control cover wherein the fitment or cover is configured to seal the candle container, in view of the teaching of any one of **US001267475 (Stroble)**, **US001365074 (Alvarez et al.)** and **US001165326 (Dunn)**.

Conclusion

See the attached USPTO form 892 for prior art made of record and not relied upon which is considered pertinent to applicant's disclosure.

THIS ACTION IS MADE FINAL

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

USPTO CUSTOMER CONTACT INFORMATION

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CARL D. PRICE whose telephone number is (571) 272-4880. The examiner can normally be reached on Monday through Friday between 6:30am-3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ehud Gartenberg can be reached on (571) 272-4828. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



CARL D. PRICE

Primary Examiner

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